

AMENDMENTS TO THE DRAWINGS

The attached sheet of drawings includes changes to Figures 3A and 3B. This sheet, which includes Figure 3A-4, replaces the original sheet including Fig. 3A-4.

Attachment: Replacement Sheet
Annotated Sheet Showing Changes

REMARKS

A. Background

The Office Action, mailed September 5, 2007, considered and rejected claims 1-23. The drawings were objected to, the specification was objected to, claims 1, 3, 8, and 17 were rejected under 35 U.S.C. 112, claims 1-4, 6-11, and 15-17 were rejected under 35 U.S.C. 103(a) as being unpatentable over *Spence et al.* (U.S. Patent No. 6,488,692), while claims 5, 12-14, and 18-23 were rejected over *Spence et al.* in view of *Gifford, III et al.* (U.S. Patent No. 5,904,697).¹

By this paper, claims 1, 3, 8, 12, and 17 have been amended.² Accordingly, following this paper, claims 1-23 remain pending, of which claims 1 and 17 are the independent claims.

B. Objections

The drawings were objected to under 37 CFR 1.83(a), while the specification was objected to because of an identified informality. Figures 3B and 3C have been amended to include a reference numeral identifying the curved connector element, the specification being amended accordingly. The paragraph beginning on Page 21, line 2 has been amended to correct the informality. Applicant respectfully requests withdrawal of the objection in view of these amendments.

C. Rejections

I. Under 35 USC 112

Claims 1, 3, 8, and 17 were rejected as being indefinite. By this amendment, claims 1, 3, 8, and 17 have been amended to correct the antecedent basis for the identified limitations. Applicant respectfully requests withdrawal of the rejection under 35 U.S.C. 112.

II. Under 35 USC 102 and 103

Spence et al. was cited as disclosing "a device for engaging tissue (entire document) comprising a generally movable annular-shaped body disposed about a central axis, a plurality of expandable (between and expandable and compressed state) looped elements . . ." (Office Action page 4). *Gifford, III et al.* was cited as disclosing the use of superelastic alloys and connector elements (Office Action page 5). The Office Action neither references nor identifies any portion

¹ Although the prior art status of the cited art is not being challenged at this time, Applicant reserves the right to challenge the prior art status of the cited art at any appropriate time, should the need arise. Accordingly, any arguments and amendments made herein should not be construed as acquiescing to any prior art status of the cited art.

² Support for the claim amendments can be found throughout the specification.

of *Spence et al.* or *Gifford, III et al.* that teaches or suggests "the body being movable from a substantially planar configuration lying generally in the plane towards a transverse configuration extending out of the plane." Even if this element of the claims had been referenced or identified and considered, Applicant respectfully submits that neither *Spence et al.* nor *Gifford, III et al.* teach or suggest such feature. The ring or body of *Spence et al.* or *Gifford, III et al.* do not move from a planar configuration to a transverse configuration. Further, *Spence et al.* or *Gifford, III et al.* do not teach or suggest "at least one first primary tine . . . being deflectable out of the plane when the body is moved towards the transverse configuration" as recited in independent claims 1 and 17.

D. Summary and Conclusion

In view of the foregoing, Applicant respectfully submits that the other rejections to the claims are now moot and do not, therefore, need to be addressed individually at this time. It will be appreciated, however, that this should not be construed as Applicant acquiescing to any of the purported teachings or assertions made in the last action regarding the cited art or the pending application, including any official notice. Instead, Applicant reserves the right to challenge any of the purported teachings or assertions made in the last action at any appropriate time in the future, should the need arise.

For at least the foregoing reasons, Applicant respectfully submits that the pending claims are neither anticipated by nor made obvious by the art of record. In the event that the Examiner finds and remaining impediment to a prompt allowance of this application that may be clarified through a telephone interview, the Examiner is requested to contact the undersigned attorney.

Dated this 5th day of December, 2007.

Respectfully submitted,

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